

## INTERIM RULES

### PURPOSE

To provide policies for the period between the voiding of promulgated personnel rules, as part of legislative enactment of civil service modernization, and the effective date of a new set of final promulgated rules

### SCOPE

This policy applies to the State Personnel Department and the agencies and employees that are part of the state civil service system.

### POLICY STATEMENT

To avoid uncertainty during the interim period, between June 30, 2011 and the final promulgation of a new comprehensive set of rules at 31 IAC 5, the State Personnel Director adopts the attached personnel policies, methods, procedures and standards as "interim rules." The interim rules are attached to and incorporated herein by reference.

Any conflicts between these interim rules and a duly promulgated final rule shall be resolved by giving full force and effect to the duly promulgated final rule.

### REFERENCES

Public Law 229-2011 (HEA 1001-2001), SECTION 284

Public Law 229-2011 (HEA 1001-2001), SECTION 285

Public Law 229-2011 (HEA 1001-2001), SECTION 269

IC 4-15-2.2-52

IC 4-15-2.2-15

IC 4-22-2

EFFECTIVE DATE July 1, 2011

APPROVAL   
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Daniel L. Hackler, State Personnel Director

DATE June 15, 2011

## **STATE PERSONNEL DEPARTMENT**

### **INTERIM RULES**

#### **Interim Rule 1. Definitions**

##### **1-1 Definitions**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 1. (a) The definitions in IC 4-15-2.2 apply throughout this article, unless the context requires another meaning.

(b) The following definitions apply throughout this article, unless the context requires another meaning:

(1) "Demotion" means the change of an employee from one (1) class to another class having a lower maximum salary.

(2) "Hourly employee" means an employee appointed to a position: (A) requiring less than half-time performance; and (B) for which the employee is paid on an hourly basis.

(3) "Part-time appointment" means an appointment to a position that does not require full-time performance but does require at least half-time performance on a regular basis, that is, a predetermined amount of time per day or per week. A part-time employee is paid a percentage of the biweekly salary received by comparably classified full-time employees.

(4) "Promotion" means a change of an employee from one (1) class to another class having a higher maximum salary rate.

#### **Interim Rule 2. Applications and Appointment**

##### **2-1 Applications; verification**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 1. (a) Application for employment shall be made in the manner prescribed by the director and shall require information covering experience, training, and other pertinent information.

(b) An applicant may be required to furnish verification of qualifying experience.

(c) Any individual claiming credit for training beyond the level of high school graduation is required to submit an official transcript or other official document certifying to the validity of such training.

##### **2-2 Appointment**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 2. All appointments to positions shall be submitted to the department in the prescribed form.

### **2-3 Approval of appointments**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-1.8-7; IC 4-15-2-4

Sec. 3. If an employment offer is declined due to unauthorized variations in offered pay rates or conditions of employment, the director may cancel the subsequent appointment.

### **2-4 Temporary and intermittent appointments**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 4. (a) In order to prevent stoppage of public business or loss or serious inconvenience to the public during an emergency, an appointing authority may make an emergency appointment of any qualified person, but notice shall immediately be given of the appointment to the director. Any such person shall be employed only during the emergency and for a period not exceeding ten (10) days. A vacancy of which the appointing authority has had reasonable notice, or an employment condition of which he or she had, or might with due diligence have had, previous knowledge, shall not be considered an emergency under which such emergency appointment may be made. No emergency appointment shall be renewed without express permission from the director.

(b) Whenever there is urgent need of an employee for a temporary period, the director may authorize a temporary appointment for a period not to exceed ninety (90) working days. Successive temporary appointments of the same person shall not be made. However, an employee may be reappointed at a later date if his or her total employment in a temporary position does not exceed ninety (90) working days in a twelve (12) month period. The period of temporary employment shall not be counted as part of the working test period.

(c) Whenever there is need for an employee on an irregular or "as needed" basis a position may be filled by an intermittent appointment. This type of appointment is limited to one hundred eighty (180) working days in a twelve (12) month period unless an exception is:

(1) requested by the appointing authority prior to the appointment and annually thereafter; and

(2) approved by the state personnel department and state budget agency.

The period of intermittent employment shall not be counted as part of the working test period.

### **2-5 Transfer procedures**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 5. (a) An appointing authority may at any time assign an employee from one (1) position to another position in the same class under the appointing authority's jurisdiction.

(b) An appointing authority, with the approval of the director, may at any time transfer an employee to another class with essentially the same basic qualifications and the same salary range.

(c) With the approval of the director, an employee may transfer from the jurisdiction of one (1) appointing authority to another appointing authority. A promotion or demotion may be simultaneous with such a transfer. The new appointing authority shall assume all vacation, sick, and personal leave accrued by the transferred employee.

(d) Any employee transferring to a position in the state classified service must be fully qualified for the class to which the employee is transferred.

(e) Whenever an employee transfers from one position to another position in the same classification or with the same pay range maximum, the beginning rate of pay in the new position shall not be more than the rate of pay the employee was receiving in the position from which he or she is being transferred, unless otherwise approved by the director.

## **2-6 Promotional appointment**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 6. Preference may be given to promotion of employees over hiring external candidates.

## **2-7 Demotion**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 7. A position may be filled by demotion of an employee in accordance with 12-1 or IC 4-15-2.2-35.

## **2-8 Underfilling positions in absence of qualified applicants**

Authority: IC 4-15-2.2-15

Affected: IC 4-12-2.2

Sec. 8. (a) The appointing authority may underfill a position. The underfilling employee must be qualified for the class to which he or she is appointed, which shall be in the same job category as the vacant position.

(b) A position that is allocated to a classification that requires admission to practice law in Indiana may be underfilled by a:

(1) student, actively enrolled in an American Bar Association approved law school; or

(2) person whose application for admission is pending.

However, an employee underfilling such a position must be admitted to the legal profession as a prerequisite to being appointed to the classification that requires admission to practice law in Indiana. Engaging in the practice of law, prior to admission to the bar of the Indiana Supreme Court, is prohibited.

## **2-9 Recall**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec 9. A position may be filled by recall from layoff as provided in IC 4-15-2.4-41.

### **Interim Rule 3. Working Test and Service Ratings [See 31 IAC 2-9.]**

#### **3-1 Working Test**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 1. (a) The working test period shall be:

(1) regarded as an integral part of the selection process for the state classified service; and

(2) utilized for:

(A) closely observing the employee's work;

(B) securing the most effective adjustment of a new employee to his or her position; and

(C) rejecting any employee who, in the opinion of the appointing authority, is unable or unwilling to perform satisfactorily or whose habits or dependability do not merit continuance in the state classified service.

(b) All appointments and promotions in the state classified service, other than temporary and intermittent, shall be subject to a working test period. The length of such working test period shall be a minimum of six (6) months.

(c) During the working test period, the appointing authority should complete at least one (1) full performance appraisal of the employee's work.

(d) Prior to the end of the working test period, the appointing authority should complete a performance appraisal, with the signature of the employee:

(1) recommending the permanent status;

(2) indicating separation of the employee; or

(3) recommending a working test extension.

Specific reasons for such extension request must be specified.

(e) A person in the state classified service shall be deemed to have permanent status if:

(1) the appointing authority has submitted a written recommendation to the director that such person be granted permanent status; or

(2) the person has been continued in a position for longer than one (1) year.

(f) Whenever positions are made subject to the classified service, persons in the same positions or similar positions six (6) months or more, shall be deemed to have successfully completed the working test period.

(g) The requirements of a working test period shall be waived in the case of recall from layoff .

#### **3-2 Service ratings**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 2. Each appointing authority is to report, at periodic intervals, service ratings for employees under his or her jurisdiction. The director may:

(1) require that any or all ratings be substantiated; and

(2) prescribe the manner of making such substantiation.

Employees shall be informed of their service ratings.

## **Interim Rule 4. Classification Plan [See 31 IAC 2-3.]**

### **4-1 Allocation of new position**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 1. When a new position is contemplated, the appointing authority shall request establishment of the position before it may be filled and, except as otherwise provided by this article, no person shall be appointed to or employed in a position until the:

- (1) position has been allocated to a class and approved by the director; or
- (2) classification plan has been amended to provide therefor.

### **4-2 Reallocation of positions**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 2. When the duties of a position are changed substantially, the director may order a review of the position. Upon completing the review, the director may order that the position be allocated to a more appropriate established class.

4-2)

### **4-3 Effect of reallocation**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 3. When a position is reallocated, the incumbent shall be continued in the position unless the incumbent is not qualified for appointment to the new class.

## **Interim Rule 5. Pay Plan**

### **5-1 Salaries; changes**

**Authority: IC 4-15-2.2-15**

Affected: IC 4-15-2.2

Sec. 1. (a) The established minimum for a class normally shall be paid upon appointment to the class. However, employment at a salary above the established rate may be approved by the director and the state budget agency.

(b) Salary advancement within the established range shall be:

- (1) dependent upon specific written recommendation; and
- (2) based upon meritorious service as indicated by service ratings and other pertinent data.

(c) Each change in status and each salary increase shall be submitted, in a prescribed manner, prior to the effective date and is subject to approval by the director.

(d) Any salary paid to an employee shall represent the total remuneration for the employee, not including reimbursements for official travel.

(e) Whenever an employee works for a period less than the regularly established number of hours a day or days per pay period, the amount paid shall be:

- (1) governed by the rate of full-time work; and
- (2) proportionate to the time actually worked.

(g) The payment of a separate salary from two (2) or more agencies for duties performed in each of such employments is permissible if the salaries received are in proper proportion to the percentage of full-time worked in each agency.

(h) No employee shall supplement any state salary through activities, engaged in on state property, such as:

- (1) collecting commissions;
- (2) owning and operating concessions; or
- (3) rendering personal or other service;

to patients, inmates, clients, wards, the public, or other employees.

(i) Employees whose substitution on unrelated positions does not involve working compensable overtime shall not be entitled to additional compensation for the additional duties. No such substitution shall exceed four (4) consecutive calendar weeks, unless the employee is compensated for any higher level duties.

## **5-2 Payroll and attendance records**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 2. (a) Each appointing authority shall maintain an attendance record for each employee, which record shall be subject to audit by the state personnel department at any time.

(b) Payroll accounts bearing the:

- (1) name and class title or corresponding code number; and
- (2) amount to be paid every employee;

shall be certified by the appointing authority or his or her designee.

## **Interim Rule 6. Employee Awards System**

### **6-1 Submission and review of suggestions**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 1. Suggestions may be submitted to the state personnel department. If the employee is eligible for an award, the suggestion will be forwarded to any agencies it would affect. The affected agencies shall return the suggestion to the suggestion committee, with a statement of:

- (1) its findings as to the viability of the suggestion;
- (2) whether or not the suggestion will be implemented; and
- (3) an estimate of the savings to be realized in the first year after implementation.

The director and the state budget agency may then authorize payment of a suggestion award to the employee submitting the suggestion.

## **Interim Rule 7. Hours and Overtime [See 31 IAC 2-11.]**

### **7-1 Work week; shifts**

Authority: IC 4-15-2.2-15

Affected: IC 4-1-2-1; IC 4-15-2.2

Sec. 1. (a) The normal minimum working week shall be thirty-seven and one-half (37½) hours except as otherwise established by:

- (1) statute;
- (2) specific ruling of the director; or
- (3) section 8 of this rule.

(b) Shift hours shall be established by the appointing authority, and assignment of employees to specific shifts shall be the prerogative of the appointing authority.

### **7-2 Overtime**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec 2. Except as provided in section 8 of this rule:

- (1) overtime shall comprise hours of work, rounded to the nearest quarter of an hour, in excess of thirty-seven and one-half (37½) hours in a work week, and
- (2) holidays, sick leave, vacation leave, personal leave, leaves of absence, compensatory time off, and time spent on call or in standby status shall not constitute hours of work or hours worked for purposes of this rule.

### **7-3 Overtime eligible and exempt classes**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec 3. The following are requirements for employees who are eligible for overtime payment:

- (1) Job categories or classifications who may normally be eligible for premium compensation for overtime shall be published in financial management circulars issued by the state personnel director and director of the state budget agency.
- (2) Employees other than those included in subdivision (1) shall not be eligible for compensation for overtime except in the following circumstances:
  - (A) The state personnel director, with the approval of the state budget agency, may authorize compensation for overtime worked by employees not normally eligible when such overtime is worked according to prescribed policy or based on a special approval.
  - (B) Special approval to compensate overtime exempt employees can only be granted by the director and state budget agency.

### **7-4 Rate of pay for overtime**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 4. Except as provided in section 6 of this rule, when an eligible employee has worked overtime that is compensable under this rule, payment for such overtime



shall be made with the regular payment for that period in which the overtime hours were worked as follows:

- (1) Employees eligible for overtime compensation by reason of section 3(2) of this rule shall be paid for overtime at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of overtime hours worked.
- (2) Eligible employees whose regularly established minimum working week is thirty-seven and one-half (37½) hours or less shall be paid for overtime at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of overtime hours worked for all such overtime that comprises forty (40) or fewer total hours of work within the work week.
- (3) Any overtime worked by an eligible employee, for which:
  - a. straight-time payment is not provided by this section; or
  - b. a different decision rule is provided by section 8 of this rule,shall be paid at a time and a half rate equal to one and one-half (1½) times the employee's regular hourly pay rate multiplied by the number of such overtime hours worked.

#### **7-5 Additional compensable time other than overtime**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 5. Requirements for payment for additional hours of work other than overtime shall be as follows:

- (1) All employees whose regularly established work schedule is less than full time shall be paid for hours worked or hours worked together with:
  - (A) sick leave,
  - (B) vacation leave,
  - (C) personal leave,
  - (D) holidays,
  - (E) compensatory time off, or
  - (F) leaves of absence with pay,during the pay period, which are in addition to the employee's normal work schedule but which do not exceed the total number of hours of work in the regularly established work schedules of employees working full time in comparable positions within the same agency or department. Payment for such additional hours of work shall be made with the regular payment for that pay period in which the additional hours were worked, at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of additional hours worked.
- (2) Employees who are eligible for overtime payments under section 3 of this rule and whose regularly established work schedule is full time, shall be paid for hours other than overtime, as defined in section 2 of this rule, worked during the pay period which together with:
  - (A) sick leave,
  - (B) vacation leave,
  - (C) personal leave,
  - (D) holidays,

(E) compensatory time off, or  
(F) leaves of absence with pay  
exceeds the total number of regularly scheduled hours of work in the employee's pay period. Payment for such additional hours of work shall be made with the regular payment for that pay period in which the additional hours were worked at a straight-time rate equal to the employee's regular hourly pay rate multiplied by the number of additional hours worked.

## **7-6 Compensatory time off**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 6. Requirements for compensatory time off shall be as follows:

### **(1) Rate of accrual**

(A) Employees eligible for overtime compensation under section 3(1) of this rule may be granted compensatory time off in lieu of monetary payment for anticipated or earned overtime work:

(i) for overtime normally compensable under section 4(3) of this rule, compensatory time off shall be granted at a time and a half rate; and

(ii) for additional hours of work other than overtime, that is, that which is normally compensable under section 4(2) or section 5(2) of this rule, compensatory time off shall be granted at a straight-time rate.

(B) Employees eligible for overtime compensation under subsection 3(2) may be granted compensatory time off at a straight-time rate in lieu of monetary payment for anticipated or earned overtime work.

(C) Employees eligible for holiday compensation under 8-1 may be granted compensatory time off at a straight-time rate in lieu of monetary payment for anticipated or earned holiday work.

### **(2) Limitation on amount of accrual**

(A) Employees eligible for premium overtime compensation who are engaged in a public safety, emergency response, or seasonal activity may accrue not more than four hundred eighty (480) hours of compensatory time off.

(B) Employees eligible for overtime compensation under subsection 3(1) of this rule and who are engaged in any work other than that described in subsection 6(2)(A) may accrue not more than two hundred forty (240) hours of compensatory time off.

(C) Compensable hours worked in excess of the limits contained in this subsection must be compensated monetarily with the regular payment of wages for the pay period in which the time was worked.

### **(3) Use of compensatory time off**

(A) Employees eligible for overtime compensation under subsection 7-3(1) shall be granted compensatory time off as follows:

(i) Unless otherwise approved by the director and state budget agency, all compensatory time off must be scheduled and taken off

prior to the end of the calendar quarter succeeding the quarter in which the additional hours were worked.

(ii) An employee who has accrued compensatory time off authorized by this rule and who has requested the use of such compensatory time off, shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

(B) Employees eligible for overtime compensation under subsection 3(2) of this rule shall normally be given compensatory time off rather than monetary payment. If the needs of the service make the granting of compensatory time off impracticable, the appointing authority may request approval of the director and the state budget agency to compensate monetarily at the rate provided in subsection 4(1).

(4) Monetary payment for accrued but unused compensatory time off to include the following:

(A) If monetary compensation is paid to an employee for accrued compensatory time off, such payment shall be at the regular rate earned by the employee at the time the employee receives such payment.

(B) An employee eligible for overtime compensation, by reason of subsection 3(1) of this rule, who has accrued compensatory time off as authorized by this section shall, upon termination of employment, be paid for the unused compensatory time off at the greater of:

- (i) the average regular hourly rate received by such employee during the last three (3) years of the employee's employment; or
- (ii) the final regular hourly rate received by such employee.

## **7-7 Regulation by budget agency**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 7. The director of the state budget agency, in such manner as is deemed necessary, may regulate the amounts of overtime to be worked in any agency or institution. Such regulation of overtime work may include a requirement that any or all overtime work, prior to its assignment, must be approved by the state budget agency.

## **7-8 Law enforcement**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 8. (a) The appointing authority of an employee engaged in law enforcement activities (including security personnel in correctional institutions) may, with prior written approval of the director and state budget agency, elect to establish work periods and compensate overtime eligible employees in accordance with 29 U.S.C. 207(k) and 29 CFR Part 553 Subpart C, in lieu of section 2 of this rule.

(b) For overtime eligible police officers, whose employer elects this option and a work period of twenty-eight (28) consecutive days, the regular work schedule will be one hundred seventy (170) hours. Additional straight time shall be paid, or compensatory

time off accrued, for compensable time in excess of the one hundred seventy (170) hours. Overtime compensation at a premium (time and one-half) (1 1/2) rate is due for hours worked in excess of one hundred seventy-one (171) hours, in the twenty-eight (28) day work period.

(c) For overtime eligible security personnel in correctional facilities, overtime compensation at the rate indicated below must be paid for all hours worked in excess of the following hours standard:

(1) If the department of correction elects this option and a work period of seven (7) consecutive days, the regular work schedule will be thirty-seven and one-half (37.5) hours. Additional straight time shall be paid, or compensatory time off accrued, for compensable time in excess of the thirty-seven and one-half (37.5) hours. Overtime compensation at a premium (time and one-half) (1 1/2) rate is due for hours worked in excess of forty-three (43) hours, in the seven (7) day work period.

(2) If the department of correction elects this option and a work period of fourteen (14) consecutive days, the regular work schedule will be seventy-five (75) hours. Additional straight time shall be paid, or compensatory time off accrued, for compensable time in excess of the seventy-five (75) hours. Overtime compensation at a premium (time and one-half) (1 1/2) rate is due for hours worked in excess of eighty-six (86) hours, in the fourteen (14) day work period.

## **7-9 Record keeping**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 9. The following are requirements for record keeping:

(1) Every appointing authority shall keep and preserve, for at least three (3) years, payroll or other records containing the following information and data with respect to each and every employee:

(A) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same name as that used for Social Security record purposes.

(B) Home address, including zip code.

(C) Date of birth, if under nineteen (19) years of age.

(D) Sex and occupation in which employed (sex may be indicated by use of the prefixes, Mr., Mrs., Ms., or Miss).

(E) Time of day and day of week on which the employee's work period begins. If the employee is part of a work force or employed in or by an establishment all of whose workers have a work week beginning at the same time on the same day, a single notation of the time of the day and beginning day of the work week for the whole work force or establishment will suffice. If, however, any employee or group of employees has a work week beginning and ending at a different time, a separate notation shall then be kept for that employee or group of employees.

(F) Pay

- (i) Regular hourly rate of pay for any week when overtime is worked and overtime excess compensation is due;
    - (ii) basis on which wages are paid; and
    - (iii) the amount and nature of each payment which is excluded from the regular rate (these records may be in the form of vouchers or other payment data).
  - (G) Hours worked each work day and total hours worked each work week. As used in this section, "work day" means any consecutive twenty-four (24) hours.
  - (H) Total daily or weekly straight-time earnings or wages, that is, the total earnings or wages due for hours worked during the work day or work week, including all earnings or wages due during any overtime worked, but exclusive of overtime excess compensation.
  - (I) Total overtime excess compensation for the work week, that is, the excess compensation for overtime worked which amount is over and above all straight-time earnings or wages also earned during overtime worked.
  - (J) Total additions to or deductions from wages paid each pay period. Every employer making additions to or deductions from wages shall also maintain, in individual employee accounts, a record of the dates, amounts, and nature of the items which make up the total additions and deductions.
  - (K) Total wages paid each pay period.
  - (L) Date of payment and the pay period covered by payment.
- (2) With respect to employees working on fixed schedules, an employer may maintain records showing, instead of the hours worked each day and each week, the schedule of daily and weekly hours the employee normally works, and:
- (A) in weeks in which an employee adheres to this schedule, indicates by check mark, statement, or other method that such hours were in fact actually worked by him or her; and
  - (B) in weeks in which more or less than the scheduled hours are worked, shows the exact number of hours worked each day and each week.
- (3) With respect to persons employed in job categories or classifications other than those enumerated in section 3(1) of this rule and who did not work overtime that is compensable, as determined by this rule, records containing all the information and data required by subsection (1) of this section shall be maintained and preserved except data required by subsection (1)(F) through (1)(J) of this section and, in addition thereto, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment, including fringe benefits.

## **Interim Rule 8. Leaves [See 31 IAC 2-11.]**

### **8-1 Holidays**

Authority: IC 4-15-2.2-15

Affected: IC 1-1-9; IC 4-15-2.2

Sec. 1. (a) Employees shall be compensated for holidays established by statute or officially proclaimed by the governor.

(b) The first day of week, commonly called Sunday, shall not be a holiday within the meaning of this rule.

(c) Any employee who is required to work on a holiday shall be paid for such work at a straight-time rate, with the regular payment for that pay period in which the holiday occurs, or, at the option of the appointing authority, may be credited with compensatory time off. Unless otherwise authorized by the director and the state budget agency, all such compensatory time off shall be scheduled by the appointing authority and must be taken within the pay period in which the holiday occurs.

## **8-2 Vacation leave**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 2. (a) Vacation leave with pay shall be earned by all full-time employees at the rate of seven and one-half (7.5) hours for each full month of employment. Employees working at least half time, but less than a full-time basis, shall earn vacation at the rate of three and three-fourths (3.75) hours a month. Vacation will not be credited to hourly, per diem, temporary, intermittent, contractual, or employees working less than half time.

(b) Eligibility for additional vacation days shall be as follows:

(1) Employees who have completed five (5) years or more of full-time employment, or ten (10) years or more of half-time employment, shall accrue twenty-two and one-half (22.5) additional hours of vacation leave with pay annually on their accrual date.

(2) Employees who have completed ten (10) years or more of full-time employment, or twenty (20) years or more of half-time employment, shall accrue thirty-seven and one-half (37.5) additional hours of vacation leave with pay (twenty-two and one-half (22.5) plus thirty-seven and one-half (37.5) for a total of sixty (60) additional hours) annually on their accrual date.

(3) Employees who have completed twenty (20) years or more of full-time employment, or forty (40) years or more of half-time employment, shall accrue thirty-seven and one-half (37.5) additional hours of vacation leave with pay (twenty-two and one-half (22.5) plus thirty-seven and one-half (37.5) plus thirty-seven and one-half (37.5) for a total of ninety-seven and one-half (97.5) additional hours) annually on their accrual date.

(4) Time spent in out-of-pay status, except for military service, shall be deducted from total service time in computing eligibility for additional vacation leave.

(5) Noncontinuous service prior to June 30, 1982, shall not be considered in determining eligibility for additional vacation leave.

(c) No vacation shall accrue to full-time employees during the first six (6) months of employment, or to part-time employees during the first twelve (12) months of employment, but, upon completion thereof, regular vacation leave shall be allowed for time served during such periods.

(d) Appointing authorities shall determine the time and amount of vacation that shall be taken at any one (1) time. Employees shall be limited to four (4) calendar weeks of vacation at any one (1) time:

(1) unless a longer period is recommended by the appointing authority and approved by the director.

(2) except as provided in Interim Rule 9-29(c).

(e) For the good of the service in arranging vacation schedules, the director may approve the request of an appointing authority for full-time employees to anticipate and take vacation leave not to exceed twenty-two and one-half (22.5) hours.

(f) Compensation for unused vacation on separation shall be as follows:

(1) Except as otherwise provided in Interim Rule 10, upon separation from the service, in good standing, an employee shall be paid for unused vacation for a maximum of two hundred twenty-five (225) hours.

(2) Compensation for unused vacation in excess of two hundred twenty-five (225) hours is only permitted in cases involving the retiree leave conversion program described in Interim Rule 10.

(3) Payment for unused vacation leave, not to exceed two hundred twenty-five (225) hours, shall be paid to beneficiaries of deceased employees.

(4) If the employee has anticipated vacation leave in accordance with subsection (e), and separated from the service before actually earning such leave, payment for leave used but unearned shall be deducted from the final payment of salary.

(5) Full-time employees who resign before they have completed six (6) months of employment, or part-time employees who resign before completing one (1) year of employment, will not be paid for any vacation leave.

(g) Vacation leave shall be charged in fifteen (15) minute increments.

(h) An employee who resigns in good standing and is subsequently rehired shall have reinstated any vacation leave that was accrued but was unused and uncompensated at the time of resignation. However, vacation leave that was compensated under Interim Rule 10 shall not be reinstated.

(i) In recognition of the fact that certain police officers have a standard work day of eight and one-half (8.5) hours instead of seven and one-half (7.5) hours, the references to the numbers of hours in this section shall be converted for those police officers who are subject to Interim Rule 7-8(b) as follows:

Hours Stated in this Section	Hours Converted for Police Officers
3.75	4.25
7.5	8.5
22.5	25.5
37.5	42.5
60.0	68.0
97.5	110.5
225.0	255.0

If an employee transfers into or out of affected police officer positions, the employee's leave balances will be adjusted proportionately to reflect the change in the number of hours of the standard work day.

### 8-3 Sick leave; definition; accrual

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 3. (a) "Sick leave" means an absence from duty of any employee because of personal illness, injury, or legal quarantine. Sick leave may also be used for the following:

- (1) An illness or injury in the employee's immediate family that necessitates the employee's absence from work. For this purpose, "immediate family" means spouse, child, or parent.
- (2) The illness or injury of a person who:
  - (A) lives in the same household with the employee; and
  - (B) is dependent upon the employee for care.

The director or appointing authority may at any time require of an employee a medical certificate from the attending physician or a designated physician, documenting the nature and extent of the disability or fitness to return to duty. The cost of such certification from a designated physician shall be the responsibility of the appointing authority. Sick leave may be granted if accrued and shall be charged in fifteen (15) minute increments.

(b) Sick leave with pay shall accrue to full-time employees at the rate of seven and one-half (7.5) hours for every two (2) full months of employment, plus seven and one-half (7.5) additional hours for every four (4) months of full-time employment. Employees working on a part-time basis shall earn sick leave at the rate of three and three-fourths (3.75) hours for every two (2) months of employment, plus three and three-fourths (3.75) additional hours for every four (4) months of employment. Sick leave will not accrue to hourly, per diem, temporary, intermittent, or contractual employees or employees working less than half time.

(c) On separation, compensation for unused sick leave is only permitted under the retiree leave conversion program described in Interim Rule 10.

(d) An employee who resigns in good standing and is subsequently rehired shall have reinstated any sick leave that was unused and uncompensated at the time of resignation.

(e) In recognition of the fact that certain police officers have a standard work day of eight and one-half (8.5) hours instead of seven and one-half (7.5) hours, the references to the numbers of hours in this section shall be converted for those police officers who are subject to Interim Rule 7-8(b) as follows:

Hours Stated in this Section	Hours Converted for Police Officers
3.75	4.25
7.5	8.5

If an employee transfers into or out of affected police officer positions, the employee's leave balances will be adjusted proportionately to reflect the change in the number of hours of the standard work day.

### 8-4 Personal leave

Authority: IC 4-15-2.2-15

Affected: IC 4-15-1.8-7; IC 4-15-2-29



Sec. 4. (a) "Personal leave" means an absence from duty with pay for personal reasons.

(b) Personal leave shall accrue to full-time employees at the rate of seven and one-half (7.5) hours for every four (4) months of full-time employment and to part-time employees working at least half time at the rate of three and three-fourths (3.75) hours for every four (4) months of service. Personal leave shall not be granted to hourly, per diem, temporary, intermittent, contractual, or employees working less than half time.

(c) No employee may accrue a personal leave balance in excess of twenty-two and one-half (22.5) hours. If an employee is otherwise eligible to accrue personal leave, but the accrual thereof would increase his or her account balance beyond the twenty-two and one-half (22.5) hour limit, the personal leave shall be credited to the employee's accrued sick leave balance.

(d) The appointing authority may establish procedures for employees to follow in securing authorization for absence on personal leave.

(e) On separation, compensation for unused personal leave is only permitted under the retiree leave conversion program described in Interim Rule 10.

(f) An employee who resigns in good standing and is subsequently rehired shall have reinstated any personal leave that was accrued but unused and uncompensated at the time of resignation.

(g) In recognition of the fact that certain police officers have a standard work day of eight and one-half (8.5) hours instead of seven and one-half (7.5) hours, the references to the numbers of hours in this section shall be converted for those police officers who are subject to Interim Rule 7-8(b) as follows:

Hours Stated in this Section	Hours Converted for Police Officers
3.75	4.25
7.5	8.5
22.5	25.5

If an employee transfers into or out of affected police officer positions, the employee's leave balances will be adjusted proportionately to reflect the change in the number of hours of the standard work day.

## **8-5 Occupational disease or injury; adjustment of compensation payments**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 5. In cases of occupational disease or injury suffered in line of duty in which the employee elects to use accumulated vacation, sick leave, personal leave, or overtime prior to the commencement of worker's compensation payments, the amount of leave charged shall be reduced in the ratio of worker's compensation payments to total salary. This applies to the seven (7) day waiting period if it is determined to be compensable. If vacation, sick leave, personal leave, or overtime is used concurrently with worker's compensation payments in order to pay full salary, the amount of leave charged shall be on the basis of the amount paid not covered by the worker's compensation payment.

## **8-6 Paid leave**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 6. (a) Subject to prior approval by the director, an appointing authority may authorize leave with pay for an employee for the purpose of securing special education or training, other than departmental in-service, directly appropriate to the employee's position, and which will result in benefit to the state.

(b) The appointing authority may allow leave with pay, not to exceed the employee's next three (3) regularly scheduled work days, in the event of the death of any relative specified in this section. The amount of time granted ordinarily will depend upon the closeness of relationship to the deceased and amount of travel necessitated by attendance at the funeral. Such leave may be granted upon the death of a:

- (1) husband
- (2) wife
- (3) father
- (4) mother
- (5) son
- (6) daughter
- (7) brother
- (8) sister
- (9) grandparent
- (10) grandchild
- (11) spouse of any of these or
- (12) person living in the same household with the employee.
- (13) For a married employees, these members of the spouse's family are included.

(c) Employees, except employees paid by the hour or day, who are lawfully required to report for jury duty, or to serve as witnesses before any body or agency having subpoena powers, shall be granted leaves of absence by their appointing authorities from their positions during the required absence for such duty. When such leaves of absence are granted for jury duty or to serve as witnesses in matters relating to employment with the state, they shall receive that portion of their regular salary from the state which will, together with the compensation for such court service, equal their total regular salary for the same period.

(d) Employees who are members of the Armed Forces Reserves or the National Guard shall be entitled to a leave of absence, not to exceed fifteen (15) work days in any calendar year, without loss of pay or vacation time. The employee shall be required to submit a written order or official statement requiring the military duty.

## **8-7 Leave Without Pay**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 7. The appointing authority, with the approval of the director, may grant an employee leave without pay for a period not to exceed two (2) years, whenever such leave is considered to be in the best interests of the state. Such leave shall be requested in writing by the employee and shall require written approval by the appointing authority and the director. Except under unusual circumstances, voluntary separation from the service in order to accept employment not in the state service shall

not be considered by the director as sufficient cause for the approval of a leave of absence without pay. Upon expiration of a regularly approved leave without pay, or sooner upon due notice if the interests of the service make it necessary, the employee shall be returned to a position in the same class as the position held at the time leave was granted. Employees on leave without pay due to personal illness, injury, or legal quarantine may be required to submit medical proof from a designated physician of fitness to return to work before resuming duties. Failure of an employee on leave to report for duty after the appointing authority issues a written notice to return shall be deemed unauthorized leave. At the time such notice is sent to the employee on leave, the appointing authority shall send a copy to the director.

#### **8-8 Military leave without pay**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 8. (a) Any employee, upon request, shall be granted a leave of absence without pay to cover the length of his or her services in the armed forces of the United States.

(b) No sick leave, personal leave, or vacation leave credits will accrue during military leave.

(c) An employee granted a military leave of absence shall be reinstated according to the dictates of federal law.

(d) If there is no vacancy, a vacancy shall be created by utilizing the layoff procedure.

(e) If the employee on military leave fails to make application for return from leave in compliance with applicable federal law, such failure will be considered as an automatic resignation.

#### **8-9 Special leave**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2

Sec. 9. (a) Subject to the approval of the director, employees occupying positions in the state classified service may be granted special leaves of absence to accept appointment to positions in the unclassified service.

(b) The special leave may be granted originally for any period of time up to a maximum of four years. Such leave may be extended annually after the end of the fourth year to cover entire period of employment in the position.

(c) Upon termination of service in the position in the unclassified service, the employee shall be returned to the same or a reasonably comparable position as the position held at the time leave was granted. The rate of pay upon return to the state classified service shall be no less than that being paid at the time leave was granted unless such rate of pay is precluded due to change of salary grade or range for the class.

#### **8-10 Special sick leave**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 10. Special sick leave that was accrued prior to July 1, 1989, may be used as provided in Interim Rule 9-29.

## **Interim Rule 9. Short and Long Term Disability**

### **9-1 Short term disability; eligibility**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 5-10-8-7; IC 22-3-2

Sec. 1. An employee who meets all the following criteria is entitled to short term disability benefits under this rule:

- (1) The employee must be employed on a full-time basis and have worked a minimum period of six (6) consecutive months of continuous full-time employment (during which time the employee is actively working without a break in service due to resignation, retirement, layoff, leave of absence or termination) prior to the beginning of the elimination period.
- (2) The employee must be absent due to illness, injury, or legal quarantine as evidenced by a physician's signed statement.
- (3) The employee must have been absent thirty (30) consecutive calendar days due to the disability.

### **9-2 Short term disability; elimination period**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 2. To be eligible for short term disability benefits, the employee must be absent from work for an elimination period of thirty (30) consecutive calendar days. Authorization for absence and salary continuation during the elimination period should be sought under the rules relating to:

- (1) vacation leave,
- (2) sick leave,
- (3) personal leave,
- (4) compensatory time,
- (5) previously accrued special sick leave,
- (6) leave without pay, or
- (7) worker's compensation.

The employee may choose the order in which vacation, sick leave, personal leave, or compensatory time is charged during the elimination period. On the thirty-first calendar day of absence due to disability, the employee becomes eligible for short term disability benefits.

### **9-3 Short term disability; basic benefit**

Authority: IC 4-15-2.2-15

Affected: IC 4-15; IC 22-3-2

Sec. 3. The basic short term disability benefit is sixty percent (60%) of the employee's base biweekly wage.

#### **9-4 Short term disability; augmentation of basic benefit**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 4. The basic short term disability benefit may be augmented up to eighty percent (80%) of the employee's base biweekly wage by pro rata charge against accrued leave balances. For example, an employee entitled to the short term disability benefit may receive eighty percent (80%) of his or her base biweekly wage by subtracting one (1) day each week from the accrued leave balance.

#### **9-5 Short term disability; duration**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 5. Short term disability benefit payments may not exceed five (5) months.

#### **9-6 Short term disability; recurrence, continued treatment**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 6. (a) An employee who returns to work from short term disability and returns to nonwork status within three (3) months will not begin a new benefit period or be subjected to a new elimination period if the second disability is the same as the first. The entire period of absence will be considered as one (1) continuous period resulting from the same disability.

(b) If the employee returns to work but periodically needs time off for ongoing medical treatment related to the disability, the sporadic absences for treatment may be compensated at the basic benefit rate or, at the employee's option, the employee may use accrued leave and receive full compensation.

#### **9-7 Long term disability; contribution**

Authority: IC 4-15-IC 5-10-8-7

Affected: IC 4-15-1.8-7; IC 22-3-2

Sec. 7. After six (6) months continuous full-time employment, an employee contribution shall be collected through payroll deductions in the amount of one-fourth of one percent (.25%) of the employee's gross biweekly compensation.

#### **9-8 Long term disability; eligibility**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 8. An employee who meets all the following criteria is entitled to long term disability benefits:

- (1) The employee must be employed on a full-time basis and have six (6) months of continuous full-time employment prior to the beginning of the elimination period.
- (2) The employee must be absent due to illness, injury, or legal quarantine as evidenced by a physician's signed statement.
- (3) The employee must have been absent for a continuous period of six (6)

months due to the disability.

**9-9 Long term disability; “disability” defined**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 9. (a) Except as provided in section 20(4) and 27 of this rule, for the first and second year, the long term disability benefit is available if the employee is unable to perform work consistent with his or her classification.

(b) The long term disability benefit is available for a third and fourth year if the employee is unable to perform the work of any occupation for which he or she is reasonably qualified by reason of education, training, or experience.

**9-10 Long term disability; basic benefit**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 10. (a) For the first and second year of long term disability, the basic benefit is fifty percent (50%) of the employee's base biweekly wage before disability.

(b) For the third and fourth year of long term disability, the basic benefit is forty percent (40%) of the base biweekly wage before disability.

**9-11 Long term benefits; augmentation**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 11. (a) During the first and second year of long term disability benefits, the basic long term disability benefit may be augmented to seventy percent (70%) of the employee's base biweekly wage, by subtracting one (1) day each week from an accrued leave balance.

(b) During the third and fourth year of long term disability benefits, the basic long term disability benefit may be augmented to sixty percent (60%) of the employee's base biweekly wage, by subtracting one (1) day each week from an accrued leave balance.

**9-12 Long term benefits; duration**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 12. (a) Except as otherwise provided in this section, long term disability benefit payments are limited to a maximum duration of four (4) years.

(b) Benefits will only be provided as long as the employee is deemed disabled.

(c) The maximum short term and long term benefit period for a mental or nervous disability is limited to twenty-four (24) months.

(d) The maximum short term and long term benefit period for drug or alcohol dependency rehabilitation is limited to twenty-four (24) months.

(e) The maximum benefit period for a disability occurring on or after attained age sixty-two (62) is limited as follows:

Age at Disability	Benefit Duration
62	3.50 years
63	3.00 years

64	2.50 years
65	2.00 years
66	1.75 years
67	1.50 years
68	1.25 years
69 +	1.00 year

### **9-13 Long term disability; recurrence, continued treatment**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 13. (a) An employee who returns to work from a long term disability and returns to nonwork status within six (6) months will not begin a new benefit period or be subject to a new elimination period if the second disability is the same as the first. The entire period of absence will be considered as one (1) continuous period resulting from the same disability.

(b) If the employee returns to work but periodically needs time off for ongoing medical treatment related to the disability, the sporadic absences for treatment may be compensated at the basic benefit rate or, at the employee's option, the employee may use accrued leave and receive full compensation.

### **9-14 Long term disability; return to work**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 14. (a) If an employee, having recovered from the long term disability, desires to return to work and the agency, in which he or she was employed before the onset of the disability, has no vacant position in their classification, or a similar classification with the same basic qualifications and salary range, then the layoff procedure shall be utilized to determine which employee is to be laid off.

(b) When benefits cease because the disability does not meet the standard set forth in subsection 9(b) of this rule, the last appointing authority, for whom the employee worked before the onset of the disability, shall offer the employee the next available position, within thirty (30) miles of his or her designated work station before the onset of the disability, at the same or a lower skill level, which he or she is legally qualified to fill and physically capable of performing. The appointing authority's obligation under this subsection ends, and employment will be terminated, upon the earlier of:

- (1) the third declination of such an offer; or
- (2) the expiration of the maximum analogous time period, applicable to the employee, set forth in section 12 of this rule.

### **9-15 Exclusions**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 15. Neither short term nor long term disability benefits are payable for a disability resulting from the following:

- (1) War, declared or undeclared.
- (2) Participation in a rebellion, insurrection, or riot.

- (3) Intentionally self-inflicted injury.
- (4) Commission, or attempt to commit, a crime.
- (5) An accident caused by intoxication due to alcohol or illicit drugs.
- (6) Willful failure to follow designated safety procedures.
- (7) Willful disregard of rules.
- (8) Willful failure to perform a stated duty.

## **9-16 Administration**

Authority: IC 4-15-2.2-15

Affected: IC 4-15; IC 5-10-8-7; IC 22-3-2

Sec. 16. (a) The application for benefits must:

- (1) be submitted by the employee, or some person acting on his or her behalf, to the state personnel department or, if a third party administrator is contracted by the state, to the third party administrator; and
- (2) include a request for benefits and a signed physician's statement evidencing the nature, extent, and probable duration of the disability.

(b) The effective date of benefit payments shall not precede the date on which application is made by the employee, or some person acting on his or her behalf, to the state personnel department or, if a third party administrator is contracted by the state, to the third party administrator.

(c) An employee must apply for Social Security and pension benefits simultaneously with or prior to application for long term disability benefits. The employee must exercise due diligence in attempting to secure an award of Social Security and pension benefits.

(d) Determination of disability and eligibility for benefits shall be made by the state personnel department in coordination with the disability determination bureau of the division of disability and rehabilitative services or by a third party administrator contracted by the state.

## **9-17 Medical examinations**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-; IC 5-10-8-7; IC 22-3-2

Sec. 17. The appointing authority, state personnel department, disability determination bureau of the division of disability and rehabilitative services, or a third party administrator contracted by the state may require examination by designated physicians. Examinations by state designated physicians shall be paid for by the state. Failure of the employee to submit to a required examination or waive the patient/physician privilege results in a disqualification of eligibility for benefits. The employee is not required to waive the patient/physician privilege as to medical conditions unrelated to his or her claim for benefits.

## **9-18 Payroll**

Authority: IC 4-15-2.2-15

Affected: IC 4-15; IC 5-10-8-7; IC 22-3-2

Sec. 18. Benefits shall be:

- (1) paid using the auditor's payroll system; and



- (2) processed through the state personnel department or third party administrator.

### **9-19 Staffing table location**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 19. (a) Employees on short term disability will continue to occupy an appropriately classified position on the staffing report of the employing agency.

(b) Employees on long term disability will be removed from the staffing report of the employing agency and placed on a special staffing report containing the names and occupations of all persons on long term disability. The state personnel director is the appointing authority for employees on long term disability; however, employees given job assignments under the partial disability program are subject to the appointing authority that assigns the work.

### **9-20 Termination**

Authority: IC 4-15-2.2-15

Affected: IC 4-15; IC 5-10-8-7; IC 22-3-2

Sec. 20. Benefits terminate when any of the following occur:

- (1) The employee fails to submit information necessary for claim administration, including, but not limited to, the following:

- (A) Authorizing attending physicians to release information to the state and third party administrator on the employee's condition and prognosis.

- (B) Timely reporting income from sources specified in subsection 22(a) or section 25 of this rule.

- (2) The employee refuses to submit to an examination by a designated physician.

- (3) The employee's medical condition no longer meets the standard set in the definition of disability.

- (4) The employee refuses to accept work assignments appropriate to the employee's medical condition.

- (5) The employee returns to regular duty.

- (6) The employee commits fraud related to his or her application for benefits.

- (7) The time specified in section 5 or 12 of this rule has expired.

- (8) The employee engages in activity that retards the employee's rehabilitation.

- (9) The employee is terminated for reasons other than the employee's absence due to disability.

### **9-21 Continuation of benefits**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 21. (a) Group health, dental, vision and life insurance will be continued in force for employees on short and long term disability. Employee contributions toward the premiums shall be deducted from the disability payments.

(b) An employee who qualifies for the short or long term disability program but whose benefits would be zero (0) because of the offset provisions of section 22 of this rule, shall receive a guaranteed minimum benefit sufficient to make the employee

contribution to group medical, dental, vision and life insurance offered by the state, that the employee was enrolled in at the time the disability began.

(c) The long term disability premium contribution shall be waived for employees receiving the long term disability benefit.

(d) No sick, vacation, personal, or other paid leave accrues while the employee is on short or long term disability.

(e) Time spent on short or long term disability is credited as service for retirement fund purposes.

(f) Retirement fund benefits will be calculated only once while the employee is on short or long term disability. Retirement fund benefits will not be recalculated until the short and long term disability benefits cease. However, any increases in benefits granted by the Indiana general assembly will increase the employee's pension payments.

## **9-22 Offsets**

Authority: IC 4-15-12.2-15

Affected: IC 4-15; IC 5-10-8-7; IC 22-3-2

Sec. 22. (a) Short and long term disability salary continuation benefits shall be reduced, dollar for dollar, if the employee derives income, as the primary recipient, from any of the following sources:

- (1) Social Security.
- (2) Public employees' retirement fund.
- (3) Teachers' retirement fund.
- (4) Any other state supported retirement fund.
- (5) Pension disability.
- (6) Worker's compensation salary continuation benefits.
- (7) Benefits provided from another employer's group plan.
- (8) Remuneration for employment entered into after the disability was incurred.

(b) An employee receiving short or long term disability benefits shall notify the state personnel department or the third party administrator, if a third party administrator is contracted by the state, within seven (7) calendar days of receipt that income has been received from any of the sources in subsection (a).

(c) Benefits provided by an individually purchased disability insurance policy or any medical expense reimbursement will not be offset.

## **9-23 Income adjustments**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 23. (a) Short and long term disability benefits are not subject to adjustment based on increases in Social Security or pension benefits. Once the amount of Social Security and pension benefits are set, they will be treated as if they remained constant for the duration of payments under this rule, such that no further offset will be made to reduce benefits under this rule.

(b) General salary adjustments granted to all employees in the disabled employee's classification:

- (1) shall cause the disabled employee's base gross biweekly wage to be

- adjusted; and
- (2) will result in an increase in benefits under this rule.
- (c) Performance based increases and bonuses will not be awarded to employees on short or long term disability.

#### **9-24 Other employment**

Authority: IC 4-15-2.2-15

Affected: IC 4-15; IC 5-10-8-7; IC 22-3-2

Sec. 24. (a) An employee who accepts other employment while receiving short or long term disability payments shall give notice, within seven (7) calendar days, to the state personnel department or the third party administrator, if a third party administrator is contracted by the state.

(b) Persons receiving short or long term disability payments may be prohibited from accepting other employment outside state government which would retard their rehabilitation.

#### **9-25 Subrogation**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 22-3-2

Sec. 25. An employee's right to recover in tort is subrogated to the state to the extent of benefits paid under this rule. If a tort claim is settled for less than the amount of benefits paid, subrogation is limited to one-half (1/2) of settlement amount.

#### **9-26 Tortious acts within scope of employment**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 26. (a) An employee who, in the scope of state employment, is disabled by injuries resulting from the tortious act of another person, shall receive one hundred percent (100%) of his or her base biweekly wage.

(b) A seven (7) calendar day elimination (waiting) period applies to this benefit. During the elimination period, the employee may use accrued leave benefits.

(c) The maximum duration of benefits under this section is one (1) calendar year from the date of the job related injury.

(d) After exhaustion of this benefit, the employee is eligible for salary continuation under worker's compensation or long term disability. In this situation, long term disability benefits may be provided for the maximum duration allowed by section 12 of this rule, subject to the termination and other provisions of this rule.

(e) The employee cannot receive both this benefit and salary continuation under worker's compensation simultaneously.

(f) The period of time an employee is eligible for temporary total disability payments or total permanent disability payments is reduced by the amount of time he or she received benefits under this section.

#### **9-27 Partial disability**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 27. (a) Short and long term disability benefits will be paid only if the disability would not permit the employee to perform any other job assignment and an appointing authority does not assign duties the employee is physically capable of performing, according to the determinations made in sections 16 through 17 of this rule.

(b) An employee unable to do his or her regular job, but who returns to work and performs any job assignment will receive eighty percent (80%) of his or her base biweekly wage or the minimum hourly rate for services performed, whichever is greater.

(c) An employee who refuses an appropriate temporary assignment shall be terminated from employment, and benefits under this rule shall cease.

#### **9-28 Other accrued leave; option**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 28. After the elimination period and prior to application for short and long term disability, an employee may request and the appointing authority may allow use of accrued:

- (1) compensatory time off,
- (2) sick,
- (3) vacation,
- (4) personal, or
- (5) special sick leave.

One (1) day of accrued leave shall be charged for each day of absence.

#### **9-29 Retention of previously accrued benefits**

Authority: IC 4-15-2.2-15; IC 5-10-8-7

Affected: IC 4-15; IC 22-3-2

Sec. 29. (a) Special sick leave benefits accrued by employees prior to July 1, 1989, in accordance with 31 IAC 1-9-5 *[31 IAC 1-9-5 was repealed filed Aug 7, 1989, 3:30 p.m.: 12 IR 2218.]* or 31 IAC 2-11-6 *[31 IAC 2-11-6 was repealed filed Aug 7, 1989, 3:30 p.m.: 12 IR 2218.]*, that are unused as of June 30, 1989, remain on account for use by the employee who has been continuously employed since July 1, 1989.

(b) An employee with more than one (1) year but less than five (5) years of continuous full-time employment as of June 30, 1989, is entitled to credit with special sick leave equal to one (1) calendar week for each calendar year of continuous full-time state employment completed prior to July 1, 1989. A proportionate amount of special sick leave will be allowed for that period of continuous service in excess of complete years, prior to July 1, 1989.

(c) After exhaustion of accumulated vacation leave, sick leave, personal leave, and compensatory time off, the special sick leave account may be used by the employee in the following circumstances:

- (1) During the elimination period, prior to the beginning of disability benefits, as provided in section 2 or subsection 26(b) of this rule.
- (2) To augment short or long term disability benefits as provided in sections 4 and 11 of this rule.
- (3) In lieu of short and long term disability benefits as provided in section 28 of this rule.

### **9-30 Agency election**

Authority: IC 4-15-2.2-15; IC 5-10-8-6; IC 5-10-8-7

Affected: IC 4-15; IC 5-10-8-4; IC 5-10-8-6

Sec. 30. The administrative heads of the state police, conservation officers, and state excise police shall notify the state personnel director whether the provisions of this rule will apply to their employees or whether they will establish separate plans providing equal benefits under IC 5-10-8-4 and IC 5-10-8-6.

## **Interim Rule 10. Retiree Leave Conversion**

### **10-1 Definitions**

Authority: IC 4-15-2.2-15; IC 5-10-12-4

Affected: IC 5-10-8-8; IC 5-10-12

Sec. 1. The following definitions apply throughout this rule:

(a) "Eligible retiree" means an individual who:

- (1) has at least ten (10) years of creditable service with a state agency;
- (2) retires after June 30, 2000;
- (3) has accrued but unused and uncompensated sick, vacation, or personal leave on the employee's retirement date; and
- (4) has not previously received the benefits of converting leave under this rule.

(b) "Retire" means terminate state employment at a time when the eligible retiree is entitled to begin receiving pension benefits from a public pension plan as a consequence of the retiree's state service.

(c) "State agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of state government, but does not include the following:

- (1) A state educational institution (as defined in IC 20-12-0.5-1).
- (2) A state elected official's office.
- (3) The legislative and judicial branches of state government.

### **10-2 Applicability**

Authority: IC 4-15-2.2-15; IC 5-10-12-4

Affected: IC 5-10-8-8; IC 5-10-12

Sec. 2. This rule applies to an eligible retiree who retired from a state agency.

### **10-3 Deposits**

Authority: IC 4-15-2.2-15; IC 5-10-12-4

Affected: IC 5-10-8-8; IC 5-10-12

Sec. 3. The state will pay the eligible retiree the amount determined in section 4 of this rule.

### **10-4 Leave valuation and maximum**

Authority: IC 4-15-2.2-15; IC 5-10-12-4

Affected: IC 5-10-8-8; IC 5-10-12

Sec. 4. (a) Subject to subsection (b), for the purpose of the retiree leave conversion program, the value of accrued but unused and uncompensated sick, vacation, or personal leave is determined as follows:

STEP ONE: Divide the retiree's regular biweekly salary, as reflected on the state personnel department's staffing report as of the retirement date, by seventy-five (75).

STEP TWO: Multiply the quotient determined in STEP ONE by the number of hours of sick, vacation, and personal leave that the retiree had accrued but which were unused and uncompensated at the time of separation.

STEP THREE: Multiply the product of STEP TWO by the following:

(A) Twenty percent (20%), for a retiree with at least ten (10) years of creditable service but less than fifteen (15) years of creditable service.

(B) Thirty-five percent (35%), for a retiree with at least fifteen (15) years of creditable service but less than twenty (20) years of creditable service.

(C) Fifty percent (50%), for a retiree with at least twenty (20) years of creditable service.

(b) In no event is the eligible retiree entitled to more than an aggregate of five thousand dollars (\$5,000) gross compensation under this retiree leave conversion program.

#### **10-5 Limitations**

Authority: IC 4-15-2.2-15; IC 5-10-12-4

Affected: IC 5-10-8-8; IC 5-10-12

Sec. 5. This rule is not intended to create any additional rights to compensation for accrued but unused vacation, sick, or personal leave beyond those rights expressly granted. Except as otherwise provided in this rule, a state employee is not entitled to compensation at separation for unused sick or personal leave and payment for accrued but unused vacation continues to be limited to two hundred twenty-five (225) hours in accordance with Interim Rule 7-2 (f)(1).

#### **10-6 Death before retirement**

Authority: IC 4-15-2.2-15; IC 5-10-12-4

Affected: IC 5-10-8-8; IC 5-10-12

Sec. 6. If an employee dies while employed by a state agency:

(1) the beneficiary designated by the employee under the state's group term life insurance policy; or

(2) if the employee does not have a beneficiary designated under the state's group term life insurance policy, then the employee's estate;

shall be paid an amount that would have been paid under this article if the employee had retired effective the day the employee died.

#### **Interim Rule 11. Layoff**

11-1 Layoff from the state classified service

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 1. An appointing authority may lay off an employee in accordance with the provisions of IC 4-15-2.2-40.

## **Interim Rule 12. Disciplinary Actions and Separations**

### **12-1 Demotion**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2; IC 4-15-2-32

Sec. 1. An appointing authority or his or her designee may demote an employee by presenting the employee with written notice of demotion, a copy of which shall be filed with the director. If the employee is not available, written notice shall be sent to the employee's last known address.

### **12-2 Suspension**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 2. (a) An appointing authority or his or her designee may suspend any employee without pay, for disciplinary purposes, by presenting the employee with written notice of suspension, a copy of which shall be filed with the director. If the employee is not available, written notice shall be sent to the employee's last known address.

(b) An appointing authority or his or her designee may suspend any employee without pay pending an investigation or trial of any charges against him or her. If the outcome of the charges or trial of any charges is favorable to the employee, the appointing authority shall reimburse the employee for any lost wages and benefits for the suspension period less any wages the employee might have earned during the suspension period from other employment.

### **12-3 Dismissal**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2

Sec. 3. (a) An appointing authority or the appointing authority's designee may dismiss an employee and terminate his or her employment by presenting the employee with a written notice of dismissal, a copy of which shall be filed with the director. If the employee is not available, written notice shall be sent to the employee's last known address.

(b) An appointing authority may dismiss an employee in a working test in accordance with IC 4-15-2.2-34.

(c) Except as provided in Interim Rule 9, an employee, eligible for benefits or subject to the elimination period under Interim Rule 9, may not be dismissed from employment due to his or her absence which results solely from the disability.

(d) A dismissed employee shall forfeit all accrued sick, personal, and vacation leave.

(e) An employee who is dismissed may be entitled to initiate a complaint, as provided in IC 4-15-2.4-42.

## **12-4 Resignation**

Authority: IC 4-15-2.2-15

Affected: IC 4-15-2.2; IC 5-8-4

Sec. 4. Any employee wishing to leave in good standing shall give the appointing authority at least two (2) weeks written notice in advance of separation. Under unusual circumstances, less time may be considered as sufficient to permit the employee to leave the service in good standing. Failure to comply with this requirement shall be entered on the service record of the employee and may be the cause of denying future employment.